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Letter dated 9 March from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Madagascar submitted pursuant to resolution 1624 (2005) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Neven **Jurica**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 11 March 2009 from the Permanent Mission of Madagascar to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of the Republic of Madagascar to the United Nations presents its compliments to the Chairman of the Counter-Terrorism Committee and, with reference to the note of 26 April 2006 regarding the implementation of the provisions of resolution 1624 (2005), has the honour to transmit herewith the reply from the Government of Madagascar (see enclosure).

Enclosure

[Original: French]

Response regarding Madagascar's implementation of Security Council resolution 1624 (2005)

Paragraph 1

1.1 What measures does Madagascar have in place to prohibit by law and to prevent incitement to commit a terrorist act or acts? What further steps, if any, are under consideration?

Prohibition by law:

- A national law on the laundering, detection and confiscation of the proceeds of crime and international cooperation in that regard was adopted in 2004 (Law No. 2004-020 of 19 August 2004). In article 1 of that law, money-laundering is defined in accordance with the Vienna and Palermo Conventions, to which Madagascar is also a party.
- However, the prohibition and prevention of incitement to commit a terrorist act or acts and the financing thereof are not yet specifically criminalized under national legislation.
- A draft law on combating terrorism and transnational organized crime, including provisions designed to cover these offences, was adopted by the Government in December 2008. The draft law will be considered for adoption at the next parliamentary session, in 2009.
- Nevertheless, the Penal Code of Madagascar covers concepts and offences akin to terrorist acts, for instance, the criminal association offences defined and punishable under articles 265, 266 and 267 of the Code.

In application of Security Council resolution 1373 (2001):

In paragraphs 1 (a), (b), (c) and (d) and 2 (c), (d) and (e) of the resolution, the Security Council calls on States to prevent and suppress the financing of terrorist acts by depriving terrorists of financial resources and preventing the use of the financial system by terrorists.

Law No. 2004-02 of 19 August 2004 provides for the establishment of a financial intelligence unit responsible for receiving, analysing and processing suspicious transaction reports involving funds that appear to be the proceeds of a crime or offence.

This unit, known as SAMIFIN, was established by Decree No. 2007-510 of 4 June 2007 and has been operational since 18 July 2008.

Furthermore, the draft legislation on counter-terrorism and transnational organized crime also contains provisions on suppressing the financing of terrorism.

The national report on implementation of Security Council resolution 1373 (2001) was drafted and submitted to the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism in September 2008.

Further steps:

- The navy and the coastal units of the army contribute to combating terrorism by taking part in maritime surveillance operations and in the State's actions at sea, particularly through the marine detachments of Nosy Be, Mahajanga and Sainte Marie. They also participate in the operations of the criminal and administrative police to check ships' documents and identify persons and goods in Madagascar's territorial waters and exclusive economic zones.
- In addition to their role in the operational defence of the territory, the army units based in the coastal areas contribute to coastal defence, the gathering of information and the communication of intelligence to other counter-terrorism entities.
- Since 1998, the National Gendarmerie has established a number of Nautical Brigades along the coast of Madagascar to support the coastal surveillance function.
- Since 2005, Madagascar has made it a priority to protect zones with high economic and tourist potential and to conduct special monitoring of zones where various types of trafficking are particularly rife.
- In 2006, criminal analysis and legal harmonization units were set up in the six former provinces in coordination with the centrally located criminal analysis service.
- Exchanges of information and intelligence among law enforcement agencies, specifically the Central Airport and Border Police Service, have been further developed.
- There are plans to expand the International Criminal Police Organization (INTERPOL) I-24/7 network beyond the National Central Bureau and to begin using fixed and mobile integrated network databases (FIND or MIND) at the main international ports and airports.
- Software known as CAPRICORNE has been installed at all of Madagascar's international airports. It is designed to record the movements of each flight and each individual (verification of prohibition of entry or departure, arrest warrants, etc.).
- A Counter-Terrorism Unit was established within the National Gendarmerie headquarters in September 2008.

1.2 What measures does Madagascar take to deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of incitement to commit a terrorist act or acts?

- The National Gendarmerie is informed by the Ministry of the Interior of any visa applications that have been withdrawn or denied. It maintains constant contact with the diplomatic corps, and especially with the INTERPOL representatives in Madagascar, so that if any person suspected of incitement to commit terrorist acts is found to have entered the country, it can immediately begin cross-checking information and cooperating fully with the requesting authorities to take the necessary action.

– Madagascar has adopted the procedures aimed at ensuring observance of the principle of non-refoulement of refugees.

Under article 38 of Decree No. 94-652 of 11 October 1994 abrogating Decree No. 66-101 of 2 March 1966 and establishing the new modalities for implementation of Law No. 62-002 on the organization and control of immigration to Madagascar, refugees "are subject to the same conditions as immigrant aliens, without prejudice to the special provisions contained in the present Decree and in the international conventions, agreements or arrangements covering stateless persons and refugees to which Madagascar has acceded or may in future accede".

The relevant authorities therefore have an obligation to respect the principle of non-refoulement of refugees set forth in article 33 of the Convention relating to the Status of Refugees, and it applies to refugees admitted to Madagascar.

It should however be noted that the same Decree allows for the expulsion and return ("refoulement") of aliens.

With regard to refugees and the right to asylum, Madagascar has not yet acceded to the Protocol relating to the Status of Refugees and has no specific legislation on this subject. Refugees are thus subject to the same conditions as immigrant aliens under Law No. 62-006 of 6 June 1962 on the organization and control of immigration (especially arts. 15, 16 and 17).

Nevertheless, any alien against whom a deportation order has been issued and who is able to prove his/her inability to leave the territory may be required by an order of the Ministry of the Interior to reside in a defined area, and to report periodically to the police or gendarmerie in that area.

The same measure may be applied when necessary to aliens in respect of whom a proposal for deportation has been issued.

There is no law under which terrorists can be excluded from benefiting from refugee status or terrorists who have already obtained refugee status can be deported. Nevertheless, the forthcoming adoption of the draft legislation on counter-terrorism and transnational organized crime will automatically result in the implementation of these measures on the basis of the principle of "no safe haven for terrorists".

Paragraph 2

1.3 How does Madagascar cooperate with other States in strengthening the security of its international borders with a view to preventing those guilty of incitement to commit a terrorist act or acts from entering their territory, including by combating fraudulent travel documents and, to the extent attainable, by enhancing terrorist screening and passenger security procedures?

The anti-terrorism services in the Ministry of Public Security are working with the corresponding services in several countries through the INTERPOL National Central Bureau (NCB), which is located in police headquarters in Antananarivo and has a staff of six. The Bureau has access to the I-24/7 network and the Automated Search Facility that allow entry into the various INTERPOL databases.

However, several difficulties are hampering its work. Actually, the INTERPOL network is in fact not much used by the NCB staff, because the Bureau Chief is the only one with access to the password. Broader and more sustained consultation of the INTERPOL databases would thus be desirable.

Also, nothing has to date been done to extend the I-24/7 communications system beyond the Bureau.

Lastly, the Bureau does not have a network of INTERPOL liaison officers in the six former provinces of the country, even though such a network would reduce the time taken to respond to requests.

Regarding the falsification of travel documents, the old passports have since January 2007 been replaced by biometric passports. The Department of Information and Immigration and Emigration Control is being assisted by the Belgian firm SEMLEX to produce passports with digital photographs and encrypted information (bar codes).

The new passports are issued upon presentation of a birth certificate that has been certified within the past six months. Applications submitted in the provinces are sent by CD-ROM to the Department, which has sole authority to issue these passports. In case of loss or theft, a police report is required and a special inquiry must be made before the document can be replaced.

Bilateral cooperation with countries like France and the United States has, since 1988, been extremely helpful to the National Police Force in intercepting intruders in possession of fraudulent residence papers in the course of transfers on the high seas. The same applies to the regional cooperation with the French Armed Forces in the Southern Zone of the Indian Ocean (FAZOI), the Southern African Development Community (SADC) and the Indian Ocean Commission (IOC), which helps to combat terrorism more effectively by means of the military manoeuvres, training sessions and courses, workshops, seminars and lectures organized for Madagascar.

Paragraph 3

1.4 What international efforts is Madagascar participating in or considering participating in/initiating in order to enhance dialogue and broaden understanding among civilizations in an effort to prevent the indiscriminate targeting of different religions and cultures?

Madagascar participated fully in the World Conference against Racism held in Durban in August-September 2001 and endorsed the ensuing Declaration and Programme of Action. It subscribes to the principles for follow-up to the implementation of the Programme of Action.

It is also a party to:

- The 1969 Convention on the Elimination of All Forms of Racial Discrimination;
- The 1976 International Covenant on Economic, Social and Cultural Rights; and
- The African Cultural Charter,

and has taken several steps to align its legislation with the provisions of the 1969 Convention.

For instance, article 26 of the country's Constitution recognizes that every individual has the right to participate in the cultural life of the community. It guarantees the right to freedom of religion without distinction as to race, origin or sex.

The Madagascar Action Plan, Madagascar's policy framework for the period 2007-2012, makes culture and religion two of its priorities and emphasizes the Government's will to respect different cultures and traditions: "As a nation, we shall honour the multiplicity of cultures and traditions of all the peoples of Madagascar".

In addition, cognizant of the importance of culture and development, the Government has made available to the public national-language publications intended to highlight the contribution made by the different cultures and civilizations and their incorporation into school curricula.

1.5 What steps is Madagascar taking to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent subversion of educational, cultural and religious institutions by terrorists and their supporters?

Since 2005, the Ministry of Justice has been holding workshops on issues connected with the implementation of the recommendations of the Inter-Committee Meeting of human rights treaty bodies. The participants in the workshops have been government officials in charge of the various ministerial departments dealing with human rights and non-governmental representatives such as customary chiefs, Christian or Muslim religious leaders, journalists and members of non-governmental human rights organizations.

Intolerance, extremism and the risk of subversive acts that would constitute terrorism being committed against educational, cultural and religious institutions are forestalled by placing emphasis on the benefits of a culture of tolerance based on "Fihavanana", which is a concept of tolerance capable of overcoming differences based on religion and culture.

The National Police Force is currently exercising close surveillance over religiously affiliated groups, associations or schools with radical ideas introduced into Madagascar, such as the African Muslim Agency or similar organizations.

Paragraph 4

1.6 What is Madagascar doing to ensure that any measures taken to implement paragraphs 1, 2 and 3 of resolution 1624 (2005) comply with all of its obligations under international law, in particular international human rights law, refugee law and humanitarian law?

In 2003, 2005 and 2008, training programmes for Malagasy judges, prosecutors, judicial police officers, customs officials and bankers serving on the Supervisory Banking and Finance Commission were organized, either abroad or in Madagascar itself, by experts from the United Nations Office on Drugs and Crime, the International Monetary Fund and INTERPOL, with a view to reinforcing their qualifications.

Within the Ministry of Justice, a Human Rights and International Relations Department has very recently been set up. This Department is involved in all activities for the promotion and protection of human rights, including follow-up to recommendations made in the concluding observations of all the human rights treaty bodies, and issues relating to terrorism and respect for human rights.